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Message Text

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PAGE 01 BRASIL 04693 151048Z
ACTION ARA-14

INFO OCT-01 ISO-00 EB-08 FTC-01 JUSE-00 L-03 CIAE-00
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FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 7889
INFO AMCONSUL RIO DE JANEIRO
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EO 11652: N/A
TAGS: BEXP, EFIN, BR
SUBJ: CLAIM OF BRAZILIAN POLITICAL DISCRIMINATION AGAINST U.S. COMPANY

REF: STATE 111727, B. BRASILIA 3628, C. RIO DE JANEIRO A-32

1. IN RESPONSE TO COMPLAINTS BY THE SOUTHWIRE COMPANY ALLEGING IMPROPRIETIES IN THE BIDDING PROCEDURES WHICH LED TO THE GRANT OF THE CARAIBA COOPER WIRE MILL PROJECT TO KRUPP INDUSTRIES, THE INTER-AMERICAN DEVELOPMENT BANK (IDB) CONDUCTED AN INVESTIAGATION OF THE CHARGES LEVIED BY THE U.S. FIRM. WE HAVE RECEIVED AN ADVANCE COPY OF THE REPORT OF THE INVESTIGATION BY THE IDB REQ IN BRAZIL, WHICH WAS TRANSMITTED UNDER RIO DE JANEIRO A-32 AND EMBASSY AND CONGEN RIO OFFICERS HAVE DISCUSSED THE CASE WITH THE IDB REP. THE FACTS OF THE CASE, ACCORDING TO THE IDB REP, ARE AS FOLLOWS.

2. AFTER PRE-QUALIFICATION SCREENING EARLIER IN THE YEAR, ON JULY 27, 1977 CARAIBA METALS INVITED THE U.S. FIRM SOUTHWARE AND THE GERMAN FIRM KRUPP TO SUBMIT BIDS ON TWO ALTERNATE VERSIONS OF A COPPER WIRE PLANT, ONE USING THE ALCOHOL PROCESS AND ONE USING THE ACID PROCESS, THE BID INSTRUCTIONS SPECIFIED THAT
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PAGE 02 BRASIL 04693 151048Z

THREE BASIC ITEMS OF EQUIPMENT, AND ANY EQUIPMENT ASSOCIATED WITH THEM, WERE TO BE EXCLUDED FROM THE BIDS.

3. ON SEPT 26, 1977 THE BIDS WERE RECEIVED, OPENED AND PROCESS READ ALOUD, SOUTHWIRE'S BIDS FOR THE ACID AND ALCOHOL ALTERNATIVES, RESPECTIVELY, WERE DOLS 17.2 MILLION AND DOLS 17.0 MILLION, WHILE KRUPPS BIDS WERE DO.0 MILLION AND DOLS 12.3 MMILLION

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

SOUTHWIRE'S BID STIPULATED THAT IT DID NOT INCLUDE THE ITEMS
WHICH THE INSTRUCTIONS ASKED TO BE EXCLUDED.

4. ON NOV 22, 1977 SOUTHWIRE INFORMED CAPAIRA THAT IT WOULD
LIKE TO LOWER ITS BID TO DLOS 4.8 MILLION (WHICH WOULD HAVE PUT
ITS BID SLIGHTLY UNDER THE KRUPP BID). IN RESPONSE TO CARAIBA'S
REQUEST FOR AN EXPLANATION, SOUTHWIRE SUBMITTED NEW PRICE LISTS
ON DECEMBER 16, 1977 DEDUCTING DOLS 4.8 MILLION FOR THE EXCLUSIVE
OF THE ITEMS WHICH THE BID INSTRUCTIONS REQUIRED TO BE EXCLUDED
PLUS TWO OTHER ITEMS. SINCE CARAIBA CALCULATED THE VALUE OF THE
LATTER TWO ITEMS AT ONLY DOLS 374,000 IT PERMITTED SOUTHWIRE
TO CHANGE ITS ORIGINAL BID BY ONLY THAT AMOUNT.

5. THE EVALUATION OF THE BIDS WAS ENTRUSTED TO USIMEC,
79 PERCENT OF WHOSE STOCK IS OWNED BY THE GOB THROUGH THE
NATIONAL DEVELOPMENT BANK AND THE STATE STEEL COMPANY
USIMINAS, AND 10 PERCENT OF WHICH IS HELD BY THE GERMAN
FIRM FERROSTAAAL), AND TO THE INTERNATIONAL ENGINEERING COMPANY -
IECO, (WHICH IS A WHOOLY-OWNED SUBSIDIARY OF THE PRIVATE BRAZILIAN
COMPANY MONTREAL ENGENHARIA). MONTREAL IN TURN, IS A MEMBER OF
THE KRUPP CONSORITUM BIDDING FOR THE BARIABA PLANT, WITH A
17 MILLION CRUZEIRO SUBCONTRACT FOR CONSTRUCTION WORK.
THIS FACT COULD BE SEEN AS SUPPORTING SOUTHWIRE'S ALLEGATION
THAT THE BID EVALUATORS WERE NOT IMPARTIAL. THIS CHARGE WOULD
BE MORE SERIOUS IF THE AWARD TO KRUPP HAD BEEN ON GROUDS OF
TECHNICAL SUPERIORITY OVER SOUTHWIRE. HOWEVER, THE AWARD WAS
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MADE ON THE BASIS OF PRICE, BOTH THE KRUPP AND SOUTHWIRE BIDS
HAVING BEEN FOUND TO BE A VERY HIGH ORDER TECHNICALLY, ALTTHOUGH
THE KRUPP PROPOSAL WAS CONSIDERED SLIGHTLY SUPERIOR.

6. IN MARCH 1973 SOUTHWIRE ASKED CARAIBA TO TAKE INTO ACCOUNT
THE FACT THAT THE DEVALUATION OF THE DOLLAR AGAINST THE GERMAN
MARK SINCE THE OPENING OF THE BIDS MADE SOUTHWIRE'S BID
ATTRACTIVE. NEVERTHELESS, THE KRUPP BID WAS STILL LOWER THAN
THE ORIGINAL SOUTHWIRE BID WITH THE LOLS 374,000 REDUCTION
PERMITTTED BY CARAIBA. THE IDB REP IN RIO DE JANEIRO HAS INFORMED
CARAIBA TTHE IDB REP IN RIO DE JANEIRO HAS INFORMED CARAIBA
THAT IN FUTURE BIDS FOR IDB-FINANCED PROJECTS ON THE DAY
THE AWARD IS MADE, RATHER THAN ON THE DATE OF OPENING THE BID
ENVELOPES.
COMMENT: EMBASSY SUGGESTS THAT USED IDB SUPPORT THE USE OF EXCHANGE
RATE AS OF THE DAY OF THE AWARD RATHER THAN OF THE BIDS IN ORDER
TO ASSURE THE BORROWER OF THE LOWEST COST ALTERNATIVE. IT MIGHT
BE EXPECTED THAT THIS PRACTIVE WILL BENEIT US FIRMS.

7. CONCLUSIONS: IT IS POSSIBLE, AS SOUTHWIRE MAINTAINS,
THAT THE REASON FOR ITS INITIAL TOO HIGH BID WAS ITS INABILITY
TO UNDERSTAND CLEARLY THE SPECIFICATIONS AND INSTRUCTIONS.

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

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HOWEVER, SOUTHWIRE HAS NOT BEEN ABLE TO DEMONSTRATE THAT THE INSTRUCTIONS WERE UNCLEAR, AND KRUPP APPARENTLY DID UNDERSTAND THEM. THUS IT IS NOT SURPRISING THAT CARAIBA DID NOT PERMIT SOUTHWIRE TO MAKE A SUBSTANTIAL CHANGE IN ITS BID AFTER LEARNING WHAT ITS COMPETITOR'S BID WAS. THE OTHER CHARGES BY SOUTHWIRE DO NOT SEEM RELEVENT TO THE OUTCOME, SINCE THE DECISION APPEARS TO HAVE BEEN MAINLY, IF NOT SOLELY, ON BASIS OF PRICE. THE FACTS CURRENTLY AVAILABLE TO US DO NOT SEEM TO PROVIDE ANY BASIS FOR ATTEMPTING TO RE-OPEN THE CASE. THE DEPARTMENT MAY WISH TO CONSULT THE IDB TO ASCERTAIN WHETHER ITS HAS ACCEPTED ITS BRAZILIAN REPRESENTATIVE REPORT OF WHETHER IT SEES ANY BASIS FOR FURTHER INVESTIGATION.
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20 Mar 2014
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